

AMENDED IN ASSEMBLY SEPTEMBER 2, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 14, 2003

AMENDED IN SENATE MAY 7, 2003

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 248

Introduced by Senator Murray
(Coauthor: Senator Florez)

(Coauthors: Assembly Members Firebaugh and Plescia)

February 14, 2003

An act to amend Sections 415, 426, 3001, 3003, 3051, and 3066 of, to add Section 3069.1 to, and to add Article 5 (commencing with Section 3070) to Chapter 6 of Division 2 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 248, as amended, Murray. Vehicles: New Motor Vehicle Board: recreational vehicles.

(1) Existing law defines a “new motor vehicle dealer” as a dealer who, among other matters, acquires for resale new and unregistered motor vehicles from manufacturers or distributors of those vehicles. Existing law establishes a New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as specified.

This bill would include a recreational vehicle, as defined, as a motor vehicle for the purposes of this definition and for the purposes of the operation of the board and related statutes, except for truck campers and park trailers. The bill would establish separate provisions regulating the terms and enforcement of recreational vehicle franchise agreements *and would require the department to impose a one-time additional license or renewal fee on those dealers who are subject to those provisions.*

The bill would require the board to recommend to a member of the public that he or she consult with the Department of Consumer Affairs regarding certain complaints, and would specify that a person's right to maintain an action regarding a transaction involving a recreational vehicle under any other provision of law is not affected by the provisions of this bill.

(2) Existing law requires 4 of the appointive members of the board to be new motor vehicle dealers, as defined.

This bill would exclude dealers who deal exclusively in recreational vehicles, as defined, from those membership provisions of the board.

(3) This bill incorporates additional changes to Section 3066 of the Vehicle Code proposed by AB 1718 and SB 298 to become operative only if AB 1718 or SB 298, or both AB 1718 and SB 298, and this bill are chaptered and become effective on or before January 1, 2004, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 415 of the Vehicle Code is amended to
2 read:

3 415. (a) A "motor vehicle" is a vehicle that is self-propelled.

4 (b) "Motor vehicle" does not include a self-propelled
5 wheelchair, invalid tricycle, or motorized quadricycle, if operated
6 by a person who, by reason of physical disability, is otherwise
7 unable to move about as a pedestrian.

8 (c) For purposes of Chapter 6 (commencing with Section 3000)
9 of Division 2, "motor vehicle" includes a recreational vehicle as
10 that term is defined in subdivision (a) of Section 18010 of the
11 Health and Safety Code, but does not include a truck camper.

12 SEC. 2. Section 426 of the Vehicle Code is amended to read:

1 426. “New motor vehicle dealer” is a dealer, as defined in
2 Section 285, who, in addition to the requirements of that section,
3 either acquires for resale new and unregistered motor vehicles
4 from manufacturers or distributors of those motor vehicles or
5 acquires for resale new and unregistered off-highway motorcycles
6 from manufacturers or distributors of the vehicles. No distinction
7 shall be made, nor any different construction be given to the
8 definition of “new motor vehicle dealer” and “dealer” except for
9 the application of the provisions of Chapter 6 (commencing with
10 Section 3000) of Division 2 and Section 11704.5. Sections 3001
11 and 3003 do not, however, apply to a dealer who deals exclusively
12 in motorcycles or recreational vehicles, as defined in subdivision
13 (a) of Section 18010 of the Health and Safety Code.

14 SEC. 3. Section 3001 of the Vehicle Code is amended to read:

15 3001. (a) Four of the appointive members of the board shall
16 be new motor vehicle dealers as defined in Section 426 who have
17 engaged for a period of not less than five years preceding their
18 appointment in activities regulated by Article 1 (commencing with
19 Section 11700) of Chapter 4 of Division 5. These members shall
20 be appointed by the Governor.

21 (b) Each of the five remaining appointive members shall be a
22 public member who is not a licentiate under Article 1
23 (commencing with Section 11700) or 2 (commencing with Section
24 11800) of Chapter 4 of Division 5 or an employee of such licentiate
25 at the time of appointment and one of these five appointive
26 members shall have been admitted to practice law in the state for
27 at least 10 years immediately preceding his or her appointment.
28 One public member shall be appointed by the Senate Committee
29 on Rules, one by the Speaker of the Assembly, and three by the
30 Governor.

31 (c) Each member shall be of good moral character.

32 (d) This section does not apply to a dealer who deals
33 exclusively in motorcycles or recreational vehicles, as defined in
34 subdivision (a) of Section 18010 of the Health and Safety Code.

35 SEC. 4. Section 3003 of the Vehicle Code is amended to read:

36 3003. (a) Each appointive member of the board shall be
37 appointed for a term of four years and shall hold office until the
38 appointment and qualification of his or her successor or until one
39 year has elapsed since the expiration of the time for which he or
40 she was appointed, whichever occurs first.

(b) The terms of the members of the board first appointed shall expire as follows: one public member and one new motor vehicle dealer member, January 15, 1969; two public members and one new motor vehicle dealer member, January 15, 1970; two public members and two new motor vehicle dealer members, January 15, 1971. The terms shall thereupon expire in the same relative order.

(c) Vacancies occurring shall be filled by appointment for the unexpired term.

This section does not apply to a dealer who deals exclusively in motorcycles or recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

SEC. 5. Section 3051 of the Vehicle Code is amended to read:

3051. This chapter does not apply to any person licensed as a transporter under Article 1 (commencing with Section 11700) or as a salesperson under Article 2 (commencing with Section 11800) of Chapter 4 of Division 5, or to any licensee who is not a new motor vehicle dealer, motor vehicle manufacturer, manufacturer branch, new motor vehicle distributor, distributor branch, or representative. This chapter does not apply to transactions involving “mobilehomes,” as defined in Section 18008 of the Health and Safety Code, “recreational vehicles,” as defined in subdivision (b) of Section 18010 of the Health and Safety Code, truck campers, “commercial coaches,” as defined in Section 18001.8 of the Health and Safety Code, or off-highway motor vehicles subject to identification, as defined in Section 38012, except off-highway motorcycles, as defined in Section 436, and all-terrain vehicles, as defined in Section 111. Except as otherwise provided in this chapter, this chapter applies to a new motor vehicle dealer, a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, except a dealer who deals exclusively in truck campers, a vehicle manufacturer as defined in Section 672, a manufacturer branch as defined in Section 389, a distributor as defined in Section 296, a distributor branch as defined in Section 297, a representative as defined in Section 512, or an applicant therefor.

SEC. 6. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, ~~or 3072~~ 3072, 3074, 3075, or 3076, the board shall fix a time, which shall be within 60 days of the order, and place of hearing, and shall send

1 by registered mail a copy of the order to the franchisor, the
2 protesting franchisee, and all individuals and groups that have
3 requested notification by the board of protests and decisions of the
4 board. Except in any case involving a franchisee who deals
5 exclusively in motorcycles, the board or its secretary may, upon a
6 showing of good cause, accelerate or postpone the date initially
7 established for a hearing, but in no event shall the hearing be
8 rescheduled more than 90 days after the board's initial order. For
9 the purpose of accelerating or postponing a hearing date, "good
10 cause" includes, but is not limited to, the effects upon, and any
11 irreparable harm to, the parties or interested persons or groups if
12 the request for a change in hearing date is not granted. The board,
13 or a hearing officer designated by the board, shall hear and
14 consider the oral and documented evidence introduced by the
15 parties and other interested individuals and groups, and the board
16 shall make its decision solely on the record so made. Chapter 4.5
17 (commencing with Section 11400) of Part 1 of Division 3 of Title
18 2 of the Government Code and Sections 11507.3, 11507.6,
19 11507.7, 11511, 11513, 11514, 11515, and 11517 of the
20 Government Code apply to these proceedings.

21 (b) In any hearing on a protest filed pursuant to Section 3060,
22 3062, 3070, or 3072, the franchisor shall have the burden of proof
23 to establish that there is good cause to modify, replace, terminate,
24 or refuse to continue a franchise. The franchisee shall have the
25 burden of proof to establish that there is good cause not to enter
26 into a franchise establishing or relocating an additional motor
27 vehicle dealership.

28 (c) In any hearing on a protest alleging a violation of, or filed
29 pursuant to, Section 3064, 3065, ~~or 3065.1~~ 3065.1, 3074, 3075, or
30 3076, the franchisee shall have the burden of proof, but the
31 franchisor has the burden of proof to establish that a franchisee
32 acted with intent to defraud the franchisor where that issue is
33 material to a protest filed pursuant to Section 3065 ~~or 3065.1~~,
34 3065.1, 3075, or 3076.

35 (d) A member of the board who is a new motor vehicle dealer
36 may not participate in, hear, comment, or advise other members
37 upon, or decide, any matter involving a protest filed pursuant to
38 this article unless all parties to the protest stipulate otherwise.

39 SEC. 7. Section 3066 of the Vehicle Code is amended to read:

1 3066. (a) Upon receiving a notice of protest pursuant to
2 Section 3060, 3062, 3064, 3065, 3065.1, 3070, ~~or 3072~~ 3072,
3 3074, 3075, *or* 3076, the board shall fix a time within 60 days of
4 the order, and place of hearing, and shall send by registered mail
5 a copy of the order to the franchisor, the protesting franchisee, and
6 all individuals and groups that have requested notification by the
7 board of protests and decisions of the board. Except in a case
8 involving a franchisee who deals exclusively in motorcycles, the
9 board or its executive director may, upon a showing of good cause,
10 accelerate or postpone the date initially established for a hearing,
11 but the hearing may not be rescheduled more than 90 days after the
12 board's initial order. For the purpose of accelerating or postponing
13 a hearing date, "good cause" includes, but is not limited to, the
14 effects upon, and any irreparable harm to, the parties or interested
15 persons or groups if the request for a change in hearing date is not
16 granted. The board or an administrative law judge designated by
17 the board shall hear and consider the oral and documented
18 evidence introduced by the parties and other interested individuals
19 and groups, and the board shall make its decision solely on the
20 record so made. Chapter 4.5 (commencing with Section 11400) of
21 Part 1 of Division 3 of Title 2 of the Government Code and
22 Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513,
23 11514, 11515, and 11517 of the Government Code apply to these
24 proceedings.

25 (b) In a hearing on a protest filed pursuant to Section 3060,
26 3062, 3070, *or* 3072, the franchisor shall have the burden of proof
27 to establish that there is good cause to modify, replace, terminate,
28 or refuse to continue a franchise. The franchisee shall have the
29 burden of proof to establish that there is good cause not to enter
30 into a franchise establishing or relocating an additional motor
31 vehicle dealership.

32 (c) In a hearing on a protest alleging a violation of, or filed
33 pursuant to, Section 3064, 3065, ~~or 3065.1~~ 3065.1, 3074, 3075, *or*
34 3076, the franchisee shall have the burden of proof, but the
35 franchisor has the burden of proof to establish that a franchisee
36 acted with intent to defraud the franchisor where that issue is
37 material to a protest filed pursuant to Section 3065 ~~or 3065.1~~,
38 3065.1, 3075, *or* 3076.

39 (d) A member of the board who is a new motor vehicle dealer
40 may not participate in, hear, comment, or advise other members

1 upon, or decide, a matter involving a protest filed pursuant to this
2 article unless all parties to the protest stipulate otherwise.

3 SEC. 8. Section 3066 of the Vehicle Code is amended to read:

4 3066. (a) Upon receiving a notice of protest pursuant to
5 Section 3060, 3062, 3064, 3065, 3065.1, 3065.2, 3070, ~~or 3072~~
6 ~~3072, 3074, 3075, or 3076~~, the board shall fix a time, which shall
7 be within 60 days of the order, and place of hearing, and shall send
8 by registered mail a copy of the order to the franchisor, the
9 protesting franchisee, and all individuals and groups that have
10 requested notification by the board of protests and decisions of the
11 board. Except in any case involving a franchisee who deals
12 exclusively in motorcycles, the board or its secretary may, upon a
13 showing of good cause, accelerate or postpone the date initially
14 established for a hearing, but in no event shall the hearing be
15 rescheduled more than 90 days after the board's initial order. For
16 the purpose of accelerating or postponing a hearing date, "good
17 cause" includes, but is not limited to, the effects upon, and any
18 irreparable harm to, the parties or interested persons or groups if
19 the request for a change in hearing date is not granted. The board,
20 or a hearing officer designated by the board, shall hear and
21 consider the oral and documented evidence introduced by the
22 parties and other interested individuals and groups, and the board
23 shall make its decision solely on the record so made. Chapter 4.5
24 (commencing with Section 11400) of Part 1 of Division 3 of Title
25 2 of the Government Code and Sections 11507.3, 11507.6,
26 11507.7, 11511, 11513, 11514, 11515, and 11517 of the
27 Government Code apply to these proceedings.

28 (b) In any hearing on a protest filed pursuant to Section 3060,
29 3062, 3070, or 3072, the franchisor shall have the burden of proof
30 to establish that there is good cause to modify, replace, terminate,
31 or refuse to continue a franchise. The franchisee shall have the
32 burden of proof to establish that there is good cause not to enter
33 into a franchise establishing or relocating an additional motor
34 vehicle dealership.

35 (c) In any hearing on a protest alleging a violation of, or filed
36 pursuant to, Section 3064, 3065, 3065.1, ~~or 3065.2~~ 3065.2, 3074,
37 ~~3075, or 3076~~, the franchisee shall have the burden of proof, but
38 the franchisor has the burden of proof to establish that a franchisee
39 acted with intent to defraud the franchisor where that issue is

1 material to a protest filed pursuant to Section 3065 ~~or 3065.1,~~
2 ~~3065.1, 3075, or 3076.~~

3 (d) A member of the board who is a new motor vehicle dealer
4 may not participate in, hear, comment, or advise other members
5 upon, or decide, any matter involving a protest filed pursuant to
6 this article unless all parties to the protest stipulate otherwise.

7 SEC. 9. Section 3066 of the Vehicle Code is amended to read:

8 3066. (a) Upon receiving a notice of protest pursuant to
9 Section 3060, 3062, 3064, 3065, 3065.1, 3065.2, 3070, ~~or 3072,~~
10 ~~3072, 3074, 3075, or 3076,~~ the board shall fix a time within 60
11 days of the order, and place of hearing, and shall send by registered
12 mail a copy of the order to the franchisor, the protesting franchisee,
13 and all individuals and groups that have requested notification by
14 the board of protests and decisions of the board. Except in a case
15 involving a franchisee who deals exclusively in motorcycles, the
16 board or its executive director may, upon a showing of good cause,
17 accelerate or postpone the date initially established for a hearing,
18 but the hearing may not be rescheduled more than 90 days after the
19 board's initial order. For the purpose of accelerating or postponing
20 a hearing date, "good cause" includes, but is not limited to, the
21 effects upon, and any irreparable harm to, the parties or interested
22 persons or groups if the request for a change in hearing date is not
23 granted. The board or an administrative law judge designated by
24 the board shall hear and consider the oral and documented
25 evidence introduced by the parties and other interested individuals
26 and groups, and the board shall make its decision solely on the
27 record so made. Chapter 4.5 (commencing with Section 11400) of
28 Part 1 of Division 3 of Title 2 of the Government Code and
29 Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513,
30 11514, 11515, and 11517 of the Government Code apply to these
31 proceedings.

32 (b) In a hearing on a protest filed pursuant to Section 3060,
33 3062, 3070, or 3072, the franchisor shall have the burden of proof
34 to establish that there is good cause to modify, replace, terminate,
35 or refuse to continue a franchise. The franchisee shall have the
36 burden of proof to establish that there is good cause not to enter
37 into a franchise establishing or relocating an additional motor
38 vehicle dealership.

39 (c) In a hearing on a protest alleging a violation of, or filed
40 pursuant to, Section 3064, 3065, 3065.1, ~~or 3065.2~~ 3065.2, 3074,

1 3075, *or* 3076, the franchisee shall have the burden of proof, but
2 the franchisor has the burden of proof to establish that a franchisee
3 acted with intent to defraud the franchisor where that issue is
4 material to a protest filed pursuant to Section 3065 ~~or 3065.1~~,
5 3065.1, 3075, *or* 3076.

6 (d) A member of the board who is a new motor vehicle dealer
7 may not participate in, hear, comment, or advise other members
8 upon, or decide, a matter involving a protest filed pursuant to this
9 article unless all parties to the protest stipulate otherwise.

10 SEC. 10. Section 3069.1 is added to the Vehicle Code, to read:
11 3069.1. Sections 3060 to ~~3063~~ 3065.1, inclusive, do not apply
12 to a franchise authorizing a dealership, as defined in paragraph (1)
13 of subdivision (e) of Section 3072.

14 SEC. 11. Article 5 (commencing with Section 3070) is added
15 to Chapter 6 of Division 2 of the Vehicle Code, to read:

16
17 Article 5. Hearings on Recreational Vehicle Franchise
18 Modification, Replacement, Termination, Refusal to Continue,
19 Establishment, and Relocation, and Consumer Complaints
20

21 3070. (a) Notwithstanding Section 20999.1 of the Business
22 and Professions Code or the terms of any franchise, a franchisor
23 of a dealer of new recreational vehicles, as defined in subdivision
24 (a) of Section 18010 of the Health and Safety Code, except a dealer
25 who deals exclusively in truck campers, may not terminate or
26 refuse to continue a franchise unless all of the following conditions
27 are met:

28 (1) The franchisee and the board have received written notice
29 from the franchisor as follows:

30 (A) Sixty days before the effective date thereof setting forth the
31 specific grounds for termination or refusal to continue.

32 (B) Fifteen days before the effective date thereof setting forth
33 the specific grounds with respect to any of the following:

34 (i) Transfer of any ownership or interest in the franchise
35 without the consent of the franchisor, which consent may not be
36 unreasonably withheld.

37 (ii) Misrepresentation by the franchisee in applying for the
38 franchise.

39 (iii) Insolvency of the franchisee, or filing of any petition by or
40 against the franchisee under any bankruptcy or receivership law.

1 (iv) Any unfair business practice after written warning thereof.

2 (v) Failure of the dealer to conduct its customary sales and
3 service operations during its customary hours of business for seven
4 consecutive business days, giving rise to a good faith belief on the
5 part of the franchisor that the recreational vehicle dealer is in fact
6 going out of business, except for circumstances beyond the direct
7 control of the recreational vehicle dealer or by order of the
8 department.

9 (C) The written notice shall contain, on the first page thereof
10 in at least 12-point bold type and circumscribed by a line to
11 segregate it from the rest of the text, one of the following
12 statements, whichever is applicable:

13 (i) To be inserted when a 60-day notice of termination is given:

14 “NOTICE TO DEALER: You have the right to file a protest
15 with the NEW MOTOR VEHICLE BOARD in Sacramento and
16 have a hearing in which you may protest the termination of your
17 franchise under provisions of the California Vehicle Code. You
18 must file your protest with the board within 30 calendar days after
19 receiving this notice or within 30 days after the end of any appeal
20 procedure provided by the franchisor or your protest right will be
21 waived.”

22 (ii) To be inserted when a 15-day notice of termination is given:

23 “NOTICE TO DEALER: You have the right to file a protest
24 with the NEW MOTOR VEHICLE BOARD in Sacramento and
25 have a hearing in which you may protest the termination of your
26 franchise under provisions of the California Vehicle Code. You
27 must file your protest with the board within 10 calendar days after
28 receiving this notice or within 10 days after the end of any appeal
29 procedure provided by the franchisor or your protest right will be
30 waived.”

31 (2) Except as provided in Section 3050.7, the board finds that
32 there is good cause for termination or refusal to continue,
33 following a hearing called pursuant to Section 3066. The
34 franchisee may file a protest with the board within 30 days after
35 receiving a 60-day notice, satisfying the requirements of this
36 section, or within 30 days after the end of any appeal procedure
37 provided by the franchisor, or within 10 days after receiving a
38 15-day notice, satisfying the requirements of this section, or within
39 10 days after the end of any appeal procedure provided by the
40 franchisor. When a protest is filed, the board shall advise the

franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b) (1) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of a notice satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

“NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchiser or your protest rights will be waived.”

1 3071. In determining whether good cause has been
2 established for modifying, replacing, terminating, or refusing to
3 continue a franchise of a dealer of new recreational vehicles, the
4 board shall take into consideration the existing circumstances,
5 including, but not limited to, all of the following:

6 (a) The amount of business transacted by the franchisee, as
7 compared to the business available to the franchisee.

8 (b) The investment necessarily made and obligations incurred
9 by the franchisee to perform its part of the franchise.

10 (c) The permanency of the investment.

11 (d) Whether it is injurious or beneficial to the public welfare for
12 the franchise to be modified or replaced or the business of the
13 franchisee disrupted.

14 (e) Whether the franchisee has adequate new recreational
15 vehicle sales and, if required by the franchise, service facilities,
16 equipment, vehicle parts, and qualified service personnel, to
17 reasonably provide for the needs of the consumers of the
18 recreational vehicles handled by the franchisee and has been and
19 is rendering adequate services to the public.

20 (f) Whether the franchisee fails to fulfill the warranty
21 obligations agreed to be performed by the franchisee in the
22 franchise.

23 (g) The extent of franchisee's failure to comply with the terms
24 of the franchise.

25 3072. (a) (1) Except as otherwise provided in subdivision
26 (b), if a franchisor seeks to enter into a franchise establishing an
27 additional motor vehicle dealership within a relevant market area
28 where the same recreational vehicle line-make is then represented,
29 or seeks to relocate an existing motor vehicle dealership, the
30 franchisor shall, in writing, first notify the board and each
31 franchisee in that recreational vehicle line-make in the relevant
32 market area of the franchisor's intention to establish an additional
33 dealership or to relocate an existing dealership within or into that
34 market area. Within 20 days of receiving the notice, satisfying the
35 requirements of this section, or within 20 days after the end of any
36 appeal procedure provided by the franchisor, any franchisee
37 required to be given the notice may file with the board a protest to
38 establishing or relocating the dealership. If, within this time, a
39 franchisee files with the board a request for additional time to file
40 a protest, the board or its secretary, upon a showing of good cause,

may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor shall not establish or relocate the proposed dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

“NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If, within this time, you file with the board a request for additional time to file a protest, the board or its secretary, upon a showing of good cause, may grant you an additional 10 days to file the protest.”

(b) Subdivision (a) does not apply to any of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and within one mile of, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and within one-quarter mile of, the location of a dealership of the same recreational vehicle line-make that has been out of operation for less than 90 days.

(3) A display of vehicles at a fair, exposition, or similar exhibit if no actual sales are made at the event and the display does not exceed 30 days. This paragraph may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though that event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code, or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(4) An annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Section 11713.15.

(c) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

~~(d) As used in this section and in Section 3073, the following definitions apply:~~

~~(1) “Motor vehicle dealership” or “dealership” means any~~
(d) *For the purposes of this section and Section 3073, a “motor vehicle dealership” or “dealership” is any authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health Safety Code. A “motor vehicle dealership” or “dealership” does not include a dealer who deals exclusively in truck campers.*

~~(2) “Recreational vehicle line-make” means that group or~~
3072.5 *For the purposes of this article, a “recreational vehicle line-make” is a group or groups of recreational vehicles as defined by the terms of a written agreement that complies with Section 331.*

3073. In determining whether good cause has been established for not entering into or relocating an additional franchise for the same recreational vehicle line-make, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(a) The permanency of the investment.

(b) The effect on the retail recreational vehicle business and the consuming public in the relevant market area.

(c) Whether it is injurious to the public welfare for an additional franchise to be established.

(d) Whether the franchisees of the same recreational vehicle line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the recreational vehicle line-make in the market area. In making this determination, the board shall consider the adequacy of recreational vehicle sales and, if required by the franchise, service facilities, equipment, supply of vehicle parts, and qualified service personnel.

(e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.

3074. (a) *A franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new recreational vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, providing a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.*

(b) *Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that he or she has fulfilled these obligations.*

3075. (a) *A franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.*

(b) *In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its*

1 various retail customers may be considered together with other
2 relevant criteria.

3 (c) If a franchisor disallows a franchisee's claim for a defective
4 part, alleging that the part, in fact, is not defective, the franchisor
5 shall return the part alleged not to be defective to the franchisee
6 at the expense of the franchisor, or the franchisee shall be
7 reimbursed for the franchisee's cost of the part, at the franchisor's
8 option.

9 (d) All claims made by franchisees pursuant to this section
10 shall be either approved or disapproved within 30 days after their
11 receipt by the franchisor. A claim not specifically disapproved in
12 writing within 30 days from receipt by the franchisor shall be
13 deemed approved on the 30th day. When a claim is disapproved,
14 the franchisee who submits it shall be notified in writing of its
15 disapproval within the required period, and the notice shall state
16 the specific grounds upon which the disapproval is based. All
17 claims made by franchisees under this section and Section 3074 for
18 labor and parts shall be paid within 30 days following approval.
19 Failure to approve or pay within the above specified time limits,
20 in individual instances for reasons beyond the reasonable control
21 of the franchisor, do not constitute a violation of this article.

22 (e) Audits of franchisee warranty records may be conducted by
23 the franchisor on a reasonable basis, and for a period of 12 months
24 after a claim is paid or credit issued. Franchisee claims for
25 warranty compensation shall not be disapproved except for good
26 cause, including, but not limited to, performance of nonwarranty
27 repairs, lack of material documentation, or fraud. Any chargeback
28 to a franchisee for warranty parts or service compensation shall
29 be made within 90 days of the completion of the audit. If a false
30 claim was submitted by a franchisee with intent to defraud the
31 franchisor, a longer period for audit and any resulting chargeback
32 may be permitted if the franchisor obtains an order from the board.

33 3076. (a) All claims made by a franchisee for payment under
34 the terms of a franchisor incentive program shall be either
35 approved or disapproved within 30 days after receipt by the
36 franchisor. When a claim is disapproved, the franchisee who
37 submits it shall be notified in writing of its disapproval within the
38 required period, and each notice shall state the specific grounds
39 upon which the disapproval is based. A claim not specifically
40 disapproved in writing within 30 days from receipt shall be deemed

1 approved on the 30th day. Following the disapproval of a claim,
2 a franchisee shall have one year from receipt of the notice of
3 disapproval in which to appeal the disapproval to the franchisor
4 and file a protest with the board. All claims made by franchisees
5 under this section shall be paid within 30 days following approval.
6 Failure to approve or pay within the above specified time limits,
7 in individual instances for reasons beyond the reasonable control
8 of the franchisor, do not constitute a violation of this article.

9 (b) Audits of franchisee incentive records may be conducted by
10 the franchisor on a reasonable basis, and for a period of 18 months
11 after a claim is paid or credit issued. Franchisee claims for
12 incentive program compensation shall not be disapproved except
13 for good cause, such as ineligibility under the terms of the
14 incentive program, lack of material documentation, or fraud. Any
15 chargeback to a franchisee for incentive program compensation
16 shall be made within 90 days of the completion of the audit. If a
17 false claim was submitted by a franchisee with the intent to defraud
18 the franchisor, a longer period for audit and any resulting
19 chargeback may be permitted if the franchisor obtains an order
20 from the board.

21 3077. (a) In addition to fees imposed under Sections 3016
22 and 11723, the department shall impose a one-time additional fee
23 on those dealers subject to this article, in an amount determined
24 by the department to be sufficient to cover the costs incurred by the
25 department and the board in the initial implementation of this
26 article, on the issuance or renewal of a license.

27 (b) All funds derived from the imposition of the fee required
28 under subdivision (a) shall be deposited in the Motor Vehicle
29 Account in the State Transportation Fund and shall be available,
30 upon appropriation, for expenditure to cover the costs incurred by
31 the department and the board in the initial implementation of this
32 article.

33 3078. (a) If the board receives a complaint from a member of
34 the public seeking a refund involving the sale or lease of, or a
35 replacement of, a recreational vehicle, as defined in subdivision
36 (a) of Section 18010 of the Health and Safety Code, from a motor
37 vehicle dealership, as defined in paragraph (1) of subdivision (e)
38 of Section 3072, the board shall recommend that the complainant
39 consult with the Department of Consumer Affairs.

(b) Nothing in this chapter affects a person's rights regarding a transaction involving a recreational vehicle as defined in subdivision (a), to maintain an action under any other statute, including, but not limited to, applicable provisions of Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

~~3075.~~

3079. This article applies only to a franchise entered into or renewed on or after January 1, 2004.

SEC. 12. (a) Section 7 of this bill incorporates amendments to Section 3066 of the Vehicle Code proposed by both this bill and AB 1718. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3066 of the Vehicle Code, (3) SB 298 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1718, in which case Sections 6, 8, and 9 of this bill shall not become operative.

(b) Section 8 of this bill incorporates amendments to Section 3066 of the Vehicle Code proposed by both this bill and SB 298. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 3066 of the Vehicle Code, (3) AB 1718 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 298 in which case Sections 6, 7, and 9 of this bill shall not become operative.

(c) Section 9 of this bill incorporates amendments to Section 3066 of the Vehicle Code proposed by this bill, AB 1718, and SB 298. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 3066 of the Vehicle Code, and (3) this bill is enacted after AB 1718 and SB 298, in which case Sections 6, 7, and 8 of this bill shall not become operative.

CORRECTIONS

Text — Pages 8 and 16.

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